

The Solicitors' Journal

VOL. LXXXIV.

Saturday, May 25, 1940.

No. 21

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Editorial, Publishing and Advertisement Offices: 29-31, Breems Buildings, London, E.C.4. Telephone: Holborn 1853.

SUBSCRIPTIONS: Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.

Annual Subscription: £2 12s., post free, payable yearly, half-yearly, or quarterly, in advance. **Single Copy:** 1s. 1d. post free.

CONTRIBUTIONS: Contributions are cordially invited, and must be accompanied by the name and address of the author (not necessarily for publication) and be addressed to The Editor at the above address.

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Current Topics.

The Colleges and the Woolsack.

OXFORD and Cambridge are naturally proud when from their colleges there go out those who in due time reach the great offices of State, and reflect in these the high ideals they have imbibed in their undergraduate days. In this connection attention may be called to an interesting short article in *The Manchester Guardian* of Tuesday of this week under the rubric, "Wadham, Balliol and the Woolsack," by Mr. F. W. HIRST, himself a Wadham man, and the author of many volumes on diverse subjects. He calls attention to the friendly rivalry between Wadham and Balliol in the race of their members for the highest prize the law can offer, namely, the Woolsack. Incidentally he recalls that many years ago, in talking to a Balliol man, he said that Wadham had produced more Chancellors than Balliol, and when asked for further and better particulars, answered that Wadham had produced one in the person of RICHARD BETHELL, whom we remember best under his title of LORD WESTBURY, whereas Balliol, so far, was without a representative on the Woolsack. Years passed, and Sir ROBERT REID, of Balliol, reached the Woolsack, and the two colleges were thus on an equality in the legal race. With the advent of F. E. SMITH (LORD BIRKENHEAD) as Lord Chancellor, Wadham again took the lead, to be further increased when another Wadham man, he whom we have long known as Sir JOHN SIMON, has become VISCOUNT SIMON and the holder of the Great Seal. One wonders whether in their day-dreams any or all of these distinguished members of the Bar visualised the likelihood of his or their attainment of the highest place in the law which England can bestow.

Trinity Law Sittings.

THE Trinity Law Sittings began on Tuesday with lists showing a very considerable reduction in the number of cases compared with the corresponding term last year. The total for the Court of Appeal is 105. Last year the corresponding figure was 170. Of the present term's final appeals, which number 104, seven are from the Chancery Division, seventy-one are from the King's Bench Division, three are from the Probate, Divorce and Admiralty Division, twenty-one are from the county courts, and there are two bankruptcy appeals. The figure relating to the King's Bench Division contains nine revenue appeals, and that for the county courts include four workmen's compensation cases. The total for the Chancery Division is 138, or forty-five less than last year. Cases in the Witness List, numbering fifty-four, are being dealt with by SIMONDS and MORTON, JJ. There are forty-five matters in the Adjoined Summonses and Non-Witness List, which is being dealt with by BENNETT and CROSSMAN, JJ. FARWELL, J., has six retained matters, and the total previously indicated is made up by a number of remaining causes and matters to be dealt with by each of the other learned judges. The present lists contain three motions in bankruptcy and forty-eight companies matters. The total for the King's Bench Division is 620, comprising 130 long non-jury actions, 444 short non-jury actions, thirty-nine commercial cases and seven actions set down for hearing under Ord. XIV. Last year the corresponding total was

1,160. It will have been observed that there are no special or common jury actions this term. The total for the Divisional Court is sixty-nine, or one more than last year. In the Divisional Court itself there are twenty-six appeals and in the Revenue Paper the number has risen from twenty-six to twenty-eight. Seventeen Admiralty actions have been set down for trial, and there are 1,428 divorce causes of which 686 are defended. The reduction in the figures for the present term is the more significant when the arrears from last term are taken into account. That the exceptional conditions of the times would lead to some delay in the hearing of cases set down for trial at the beginning of last term is hardly surprising. The matter was briefly considered in *The Times* recently, and it was duly noted that the position in the Chancery Division and in the King's Bench Division was satisfactory, though a few long non-jury actions in the latter have been held over till this term. Difficulties in coping with the lists were, however, experienced in the Court of Appeal and in the Probate, Divorce and Admiralty Division. In the former case it may be recalled that the total for the Easter term was 100. Notwithstanding the considerable reduction which this figure represents when compared with that for the corresponding term of the previous year (when the total was 186), only one-half of the cases had been disposed of at the end of the term. The explanation is, of course, that the Lords Justices were largely engaged on other public duties. Divorce causes at the beginning of last term, including forty part-heard cases, numbered 1,445, and of these only 850 were disposed of. In this case the work of the Prize and Admiralty Courts had engaged the attention of the judges and reduced the time available for the hearing of divorce causes.

The Emergency Powers (Defence) Act, 1940.

THE drastic powers conferred by Parliament upon the executive by the Emergency Powers (Defence) Act, 1940, which passed through all stages in both Houses and received the Royal Assent on Wednesday, have been duly indicated in the daily Press. It will not be necessary to repeat them here, but the terms in which they are conveyed should be briefly recorded. The Act provides that the powers conferred on the Crown by the Emergency Powers (Defence) Act, 1939, shall, notwithstanding anything in that Act, include power by Order in Council to make such Defence Regulations "making provision for requiring persons to place themselves, their services and their property at the disposal of His Majesty, as appear to him to be necessary or expedient for securing the public safety, the defence of the realm, the maintenance of public order or the efficient prosecution of any war in which His Majesty may be engaged, or for maintaining supplies or services essential to the life of the community." Various amendments, which need not be specified, are introduced into the Act of 1939, though it may be noticed that "two years" is substituted for "one year" in s. 11 (1) relating to the duration of the Act. Thursday's *Times* states: "At this grave moment a united nation feels no hesitation or misgiving, though the new Act . . . comes near to suspending the very essence of the Constitution as it has been built up in a thousand years. Our ancient liberties are placed in pawn for victory; nothing less than the destruction of Hitlerism will redeem them." Readers will, it is thought, readily assent to these propositions.

The Treachery Act.

THE Treachery Act, 1940, the object of which is to make further provision for the trial and punishment of treachery, has been drafted in wide terms. Section 1 contains the essential matter of the Act and provides: "If, with the intent to help the enemy, any person does, or attempts or conspires with any other person to do, any act which is designed or likely to give assistance to the naval, military or air operations of the enemy, to impede such operations of His Majesty's forces, or to endanger life, he shall be guilty of felony and shall on conviction suffer death." The next two sections provide respectively for the trial and punishment of offences, and for the joinder of charges and place of trial. It is unnecessary fully to analyse these provisions, but it may be briefly noted that, subject to certain important provisos, persons charged with offences against the Act will be prosecuted upon indictment, and, if convicted, will be dealt with as persons convicted on indictment of murder. The consent of the Attorney-General is required for prosecutions under the Act (otherwise than by way of proceedings for trial by court-martial) but not for the arrest or the remanding in custody or on bail of persons charged with an offence against the Act. The latter section above referred to provides that "notwithstanding any rule of law or practice," charges for any offences, except treason, may be joined with a charge for any offence under the Act in the same indictment or charge-sheet, if the charges are founded on the same facts or form, or are a part of, a series of offences of the same or similar character. The duration of the Act is dealt with by a provision to the effect that no person shall be guilty of an offence thereunder by reason of anything done after such day as His Majesty may by Order in Council declare to be the date on which the emergency which was the occasion of the passing of the Act came to an end.

The War Charities Bill.

THE War Charities Bill, which passed through Committee in the House of Lords on 21st May, has been drafted on similar lines to the Act of 1916 passed during the last war, though the position at the present time has been improved by the House to House Collections Act, 1939. Moving the second reading on the 7th May, the MARQUESS OF DUFFERIN AND AVA said that further control was necessary. It was still possible to appeal to the public through the Press or by advertisement, and several dubious appeals had already been launched. For that reason the definition of "war charity" in the Act of 1916 had been extended to include charities connected with the present war, and provision had been made for the extension of the proposed Act, by Order in Council, to other wars or acts of aggression. Under cl. 1 no appeal may be made to the public on behalf of a war charity unless the charity is registered or exempted from registration, and unless the charity itself has approved the appeal. The registration authority is the county or county borough council of the locality where the headquarters of the charity are situated. Exemption may be given to small charities where the authority is satisfied that the public interest is not hurt thereby. Grounds for refusal of registration, or for removal from the register, which are set out in cl. 2, are in the main the same as those specified in the Act of 1916, though these have been strengthened by the inclusion of the more detailed particulars set out in the House to House Collections Act. A charity which has been refused registration may appeal to the Charity Commissioners, who are to maintain a central register and are to be the central authority for the purposes of the measure. The conditions with which a registered charity must comply are set out in cl. 3. These are, briefly, that there must be a responsible committee of not less than three people, that there must be a proper book of accounts which will have to be submitted at intervals to the registration authority, and that there must be a separate banking account open to inspection by such persons as the registration authority may appoint. The measure is to apply, with suitable modifications as to the central and local authorities, to Scotland.

Witnesses and Daily Cause Lists.

THE Attorney-General was recently asked in the House of Commons whether he was aware of the waste of time and money and of the inconvenience, aggravated by war-time conditions of travelling, caused to witnesses attending courts of law on subpoena through the number of cases included in the daily cause lists being habitually "far in excess" of the number for which time was likely to be available; and he was asked whether he would consult with the appropriate authorities with a view to having more convenient arrangements made. In reply, the Attorney-General intimated that an analysis of the figures of cases listed and heard in the

King's Bench Division during the Easter term would show that the number put in the daily cause list for each judge on each day was not in excess of the time likely to be available, and that in fact but a small percentage of cases were not reached on the days on which they first appeared in the list for trial. In the Chancery Division generally the lists were arranged with a view to meeting the convenience, so far as possible, of the persons concerned with the action, and if it should appear that inconvenience might be caused to witnesses, the judge would, on application to him, fix a day for hearing. But the Attorney-General stated that it was impossible wholly to guard against the inconvenience mentioned in the question, although those responsible for the lists were anxious that the inconvenience should be avoided as far as possible.

The Coal Act: Administration under War Conditions.

SECTION 57 (b) of the Coal Act, 1938, requires the Coal Commission to make a report annually to the Board of Trade, at such date and in such form as the Board may direct, as to its proceedings under the Act during the previous year, and provides further that the Board of Trade shall lay every such report before Parliament. In reply to questions raised in the House of Lords on 7th May concerning the administration of the Act, EARL FORTESCUE stated that the Commission's report for two years had been submitted on 2nd March, and would be laid before Parliament in the course of the next few days. Valuation under the Act had been suspended owing to the fact that a considerable proportion of the staff of the Coal Commission had been engaged on emergency work in the Mining Department and other Government Departments. The staff which had been taken away from the Coal Commission had since been released from the various duties on which it had been engaged, some places had been taken by others who had been trained for the purpose, and work on the valuation was about to start again. The registration work had been going on all the time. The vesting date had been fixed at 1st July, 1942, and when the Act was passed the Government considered that it afforded plenty of time in which the valuation could be completed. The Government still hoped that the date would remain unchanged for many reasons.

Workmen's Compensation: Suggested Changes.

SOME important changes in the law relating to compensation for accidents to employees were recently advocated before the Royal Commission of Workmen's Compensation. Dame GEORGINA BULLER urged that one of the main objections to the present Workmen's Compensation Act was the system of lump sum payments. To a worker accustomed to a weekly wage, a lump sum appeared to represent inexhaustible capital, and there were plenty of people to exploit his inexperience. Many readers will, it is thought, endorse this view. Mr. G. THOMSON, President of the National Federation of Professional Workers, dealt with the problem of the quantum of compensation in relation to the injured employee's wages or salary. He thought that the present provisions represented a grave defect in the law, and that they frequently inflicted hardships and injustices. The law, he said, operated harshly against all the better paid workers and their families. Particular objection was taken to the existing flat rate maximum of compensation, and to the salary limit of £350. He urged that both should be abolished. In regard to compensation for partial incapacity, he advocated the payment by way of compensation of the difference between the amount of the former and post-accident earnings. Where a widow or invalid husband was the sole dependent in a fatal accident case, the same speaker suggested that payment should be not less than 50 per cent. of the worker's weekly earnings, with special payments for dependent children. He also urged that employers should be compelled to insure fully against accidents, and advocated the abolition of the doctrine of "common employment."

Recent Decision.

IN *R. and A. Kohnstamm, Ltd. v. Ludwig Krumm (London)*, Ltd. (*The Times*, 22nd May), MACNAGHTEN, J., held that the plaintiffs were entitled to recover under a guarantee in writing dated 22nd January, 1936, by which the defendants guaranteed payment to the plaintiffs for goods supplied by the plaintiffs to a company in Germany. The words "discharged any obligation of an enemy," in s. 1 (2) (a) (iii) of the Trading with the Enemy Act, 1939, meant a complete discharge of the obligation and not a mere transfer of the debtor's obligation to pay from the creditor to the guarantor, and proviso (ii) to s. 1 (2) precluded the defendants from relying on the Act.

War-time Control of Finance.

(Continued from page 329.)

II.—STOCKS AND SHARES.

JUST as in the case of currency, many war-time restrictions relating to stocks and shares have become necessary as a part of the wider scheme of general financial control. It is proposed to deal in this article with some of such restrictions. These restrictions are to be found mainly in the Defence (Finance) Regulations Amendment (No. 2) Order, 1939 (S.R. & O. No. 1620), as further amended by S.R. & O., 1940, No. 608; S.R. & O., 1940, No. 688; and S.R. & O., 1940, No. 708. The Trading with the Enemy Act, 1939 (2 & 3 Geo. 6, c. 89), and the Trading with the Enemy (Custodian) Order, 1939 (S.R. & O., No. 1198), also have some bearing on this matter; they will be considered later. It is well to remember that when the Defence (Finance) Regulations Amendment Order, hereinafter called "the Defence (Finance) Regulations," speaks of a security, then by virtue of reg. 10 this word is to be taken to include shares, stocks, debentures and debenture stock, and that the owner of such security is to be taken to be any person who has power to sell or to transfer the security, or who has the custody thereof, or who receives dividends or interest thereon, or who has any other interest therein.

Compulsory Acquisition of Foreign Securities.

It is not all foreign shares which are affected by the emergency legislation, but only those the control of which is necessary for the purpose of strengthening the financial position of the United Kingdom. This control is brought into being by reg. 1 of the Defence (Finance) Regulations, as amended by S.R. & O., 1940, No. 608, and the control applies to such shares as are specified by the Treasury in the Securities (Restrictions and Returns) Order, 1939 (S.R. & O., No. 966), as amended by the Securities (Restrictions and Returns) Amendment Order, 1939 (S.R. & O., No. 1300). The securities so specified by para. 3 of this Order are—

"those of which the principal, interest or dividend are payable in the currency of Argentina, Canada, France, Holland and the Dutch East Indies, Norway, Sweden, Switzerland and the United States of America, or securities for which the holder has the option to have the principal, interest or dividend paid in those currencies."

And by the Securities (Restrictions and Returns) (No. 2) Order, 1939 (S.R. & O. No. 1427), there was added to this list Dominion of Canada $3\frac{1}{2}$ per cent. Stock 1930-1950.

Power is given to the Treasury to exempt from the provisions of reg. 1 either by an order generally with respect to any description of securities or by a certificate given by them or on their behalf with respect to any particular security. This power is contained in reg. 5A of the Defence (Finance) Regulations, which was first introduced by the Defence (Finance) Regulations Amendment (No. 2) Order, and later somewhat modified by another amending order, S.R. & O., 1940, No. 688. Any certificate granted or order made in exercise of this power relates not only to the securities specified therein, but also to any security to which the owner of the specified securities becomes entitled either by way of bonus or of any conversion operation, amalgamation or reconstruction. An order in pursuance of this power, entitled the Securities (Exemption) Order, 1940, No. 356, was issued on 15th March, 1940; it exempts a considerable number of securities specified in the schedule thereto, which schedule should be consulted for details.

Sub-paragraph (1) (a) of reg. 1 of the Defence (Finance) Regulations lays it down that no person being an owner of any of the above securities shall sell, transfer or create a charge on them without permission of the Treasury, whilst sub-para. (1) (b) of the same regulation enacts that a return of such securities shall be made to the Bank of England by the owners thereof. Further details as to the making of such returns are to be found in para. 2 of the amended Securities (Restrictions and Returns) Order, previously mentioned; the return had to be made before the 9th October, 1939, or before the end of two weeks from the date on which the owner became such owner, unless the securities happen to be securities exempted from this requirement by the Treasury.

Power is given to the Treasury by reg. 1 (2), as amended by S.R. & O., 1940, No. 608, to take over and transfer to itself such of these securities as it may from time to time determine at prices to be fixed in the manner set forth in this paragraph. By sub-para. (3) (a) of the same regulation, securities so taken over vest in the Treasury free from any mortgage or charge. Three orders taking over certain securities have been issued—the Acquisition of Securities Order, 1939, S.R. & O., No. 1428, the Acquisition of Securities Order, 1940, S.R. & O., No. 213, and the Acquisition of Securities (No. 2) Order, 1940, S.R. & O., No. 527. By the first of these Orders the Dominion of Canada $3\frac{1}{2}$ per cent. Stock was acquired by

the Treasury, and by the other two a large number of securities specified in the schedules to the Orders were acquired. These are mostly American securities, but for details the schedules themselves should be consulted. By virtue of para. (6) of the regulation the foregoing enactments are not to apply when all the persons interested in the security have not been resident in the United Kingdom since 26th August, 1939. The meaning of "security" is somewhat enlarged for the purpose of this regulation by para. (8), which states that a deposit receipt for a security shall be treated as a security.

Restrictions on the Transfer of Securities.

This form of control is of very recent origin, being introduced on the 13th May, 1940, by S.R. & O., 1940, No. 708, which has added to the Defence (Finance) Regulations two new regulations—reg. 3A, which deals with the transfer of ordinary securities, and reg. 3B, which deals with the transfer of bearer bonds, share warrants to bearer and the like. The case of the security or any interest therein being owned by a person resident outside the United Kingdom or the Isle of Man is dealt with in reg. 3A (1); whilst the case of a transfer to a person resident outside this area is dealt with in reg. 3A (2). Both these paragraphs of reg. 3A forbid, subject to any exceptions to be granted by order of the Treasury, any such transfers as the respective paragraphs deal with, unless the express permission of the Treasury has been obtained for the particular transaction in question. An order granting exceptions of the type above envisaged was issued at the same time as the new regulation; it is the Currency and Securities Restriction Exemptions (No. 1) Order, 1940, S.R. & O., No. 710. By para. 3 of this Order the expression "United Kingdom" in reg. 3A is to be deemed to include the countries of the sterling group, which have already become a feature of this system of finance control (84 SOL. J. 328). Examining in greater detail the new regulation, we find that no person shall agree to transfer or transfer, or agree to acquire or acquire, otherwise than by operation of law or by inheritance, any security or interest in a security unless the Treasury or persons authorised on their behalf are satisfied that such security or interest therein is not owned by a "non-resident"; and this term "non-resident" will be used hereinafter to mean a person resident outside the sterling area. Special permission, however, may be granted by the Treasury for particular transactions, and the transfer or acquisition, before the 11th June, 1940, of any security or interest therein in pursuance of a contract made before the 13th May, 1940, is not affected. Paragraph (2) of this regulation prohibits, except with special permission granted by the Treasury, the transfer of a security or interest therein or the creation of an interest therein in favour of a "non-resident"; it goes on further to forbid the registration of such a purported transfer or the alteration of any register in connection therewith. A trustee or agent holding any securities shall not by para. (3), except by permission granted by the Treasury, do any act which recognises or gives effect to any of the operations forbidden by paras. (1) and (2). The position of registrars of companies is affected by para. (4) of this new regulation, which forbids any person to enter any transfer whatsoever of securities in any register or book unless evidence has been produced to him that the transfer does not involve a contravention of the regulations.

Much new and detailed work is thus cast upon the registrars of companies as a result of para. (4) of the new regulation. Instructions and advice are given to them in a supplement to the *London Gazette* of the 14th May, 1940, in the Explanatory Notice and Instructions for Procedure dated the 13th May, 1940 (and obtainable from banks and stockbrokers), and in Form D for use in connection with securities transferable by deed. This Form D, with the sections appropriate to the various types of transaction duly filled in, must accompany the usual documents sent to a registrar on the transfer of a security, even when the transfer is one between two residents. It contains declarations made by the transferor and by the transferee as to their residence, each declaration supported by the stamp or signature of their agent, being one of the banks or a member of one of the Stock Exchanges set out in a list printed in the supplement to the *London Gazette* previously mentioned. If both parties are "residents" the transfer may be registered forthwith. If the transfer is from a "resident" to a "non-resident," a third section of Form D is required declaring that the current market value of the security has been paid out of moneys belonging to a "non-resident." It is further necessary, before the registrar may register the transfer, that the fourth section of Form D shall be completed showing that the consent of the Treasury or of the Bank of England or other person appointed on its behalf has been obtained. Somewhat similar rules apply when the security is to be transferred to a group of persons, some of whom are, and some of whom are not, "residents."

The matter is somewhat more complicated if the security is to be sold by a "non-resident." A licence must first be obtained. This is obtained by an application on Form L to either the Bank of England or the Share and Loan Department of the London Stock Exchange. Such licence will normally be issued for a sale to—

- (i) a "resident" of any security quoted or dealt with on the Stock Exchanges and issued within the sterling area ;
- (ii) a "non-resident" of any security.

After this licence has been obtained the procedure is very similar to that above described in the case of a transfer from a "non-resident," the licence being required to obtain the Treasury sanction in the fourth section of Form D.

When the transfer arises by operation of law or by inheritance, which form of transfer of a security owned by a resident is not affected by reg. 3A (1), the registrar may accept for registration the transfer if it is accompanied by a certificate signed by a solicitor to the effect that the transfer arises by operation of law or by inheritance. The position of a transfer of this type from a "resident" to a "non-resident" or from a "non-resident" to any other person seems somewhat obscure. As regards transactions which result from a contract entered into prior to the 13th May, 1940, registrars may accept, until the 11th June, 1940, for registration any transfers endorsed with a certificate by the Bank of England, by one of the other authorised banks, or by a member of the authorised Stock Exchanges, that the relative contract was entered into before the 13th May, 1940.

Analogous regulations apply to bearer bonds, share warrants to bearer and other documents of title by delivery of which the title to securities or any interest therein is transferable. By reg. 3B no person shall, except with permission granted by or on behalf of the Treasury, issue such documents of title. But the regulation expressly excludes from the prohibition an issue of such a document for the purpose of replacing any such document which has been lost or destroyed. Paragraph (2) of this regulation makes the regulation binding on the Crown and in relation to the issue of documents of title relating to securities the issue of which was authorised by an Act of Parliament passed before the 24th August, 1939, the Treasury shall not be bound to grant permission for a transfer by virtue of any contract into which they might have entered. In the Explanatory Notice and Instructions for Procedure, directions are given as to how the transfer of such bearer securities is to be carried out. It is somewhat similar to that required in the case of ordinary securities; instead of Form D, another one—Form B—which has to be in duplicate, is required. Similar considerations as to residence apply, and declarations as to this by the seller's and buyer's agents, being bankers or members of the Stock Exchange, are required. In the case of a "non-resident" the sanction of the Treasury has to be obtained by completing the third and fourth sections of Form B as already described in the case of Form D. But even in the case of a transfer between "residents" the fourth section, showing that the Treasury are satisfied that all the parties to the transaction are "residents," must be completed. Form B, duly filled in, must accompany the bearer bond or other document of title and is an essential to good delivery.

(To be continued.)

Company Law and Practice.

ALTERATION OF ARTICLES RESULTING IN A BREACH OF CONTRACT.

CONTRACTUAL rights against a company may be conferred by the company's articles of association, or by a separate and distinct contract with the company; and if such a contract embodies some provisions of the articles, the question may arise whether the company is at liberty to alter the relevant articles in such a manner as to affect the rights existing under the contract. The most obvious case of contractual rights conferred by the articles themselves is, of course, that of the rights of a member in respect of his shares. Sometimes, it is true, rights may be attached to shares by the terms of issue, but usually such rights, or some of them, are conferred by the articles themselves. Now a company has statutory power to alter its articles (s. 10 of the Companies Act, 1929) and such an alteration may well involve an alteration of the rights attached to the shares. For example a company may by its articles have a lien on partly paid shares for moneys owing to it by the holders; can the articles be altered so as to extend the lien to fully paid shares, and, if so, is the lien so extended enforceable in respect of debts contracted and due to the company before the articles are altered? The answer to both questions is in the affirmative; as to the first, the power to alter the articles (so long as the alteration does not infringe the Act or the memorandum of association) is unrestricted, provided at least that it is exercised *bona fide*

for the benefit of the company; as to the second, shares whose rights are conferred by the Articles are taken subject to the articles and to the company's powers of altering its articles. Rights depending purely on articles are, necessarily, no less alterable than the articles themselves, and they are limited as to their duration by the duration of the articles which confer them (see *Allen v. Gold Reefs of West Africa, Ltd.* [1900] 1 Ch. 656). So if a person is appointed a permanent director by the articles, and there is no contract outside the articles, his appointment is subject to the company's power of altering the articles and thereby terminating his office; if this is done *bona fide* for the benefit of the company there is no breach of contract (*Shuttleworth v. Cox Brothers & Co. Ltd.* [1927] 2 K.B. 9).

The position, however, is different where a person, be he a shareholder or not, has a contract outside the articles which expressly or impliedly confers rights by reference to the articles; in such a case an alteration of the articles may involve a breach of the contract for which the company is liable. "Although the regulations contained in a company's articles of association are revocable by special resolution, a special contract may be made with the company in the terms of or embodying one or more of the articles, and the question will then arise whether an alteration of the articles so embodied is consistent or inconsistent with the real bargain between the parties. A company cannot break its contracts by altering its articles, but, when dealing with contracts referring to revocable articles, and especially with contracts between a member of the company and the company respecting his shares, care must be taken not to assume that the contract involves as one of its terms an article which is not to be altered" (per Lindley, M.R., in *Allen v. Gold Reefs of West Africa, Ltd.*, *supra*, at p. 673).

The principle that a company cannot by altering its articles justify a breach of contract which is independent of the articles, is illustrated by the decision of the Court of Appeal in *Baily v. British Equitable Assurance Co.* [1904] 1 Ch. 374 (reversed on the facts [1906] A.C. 35). There the question related not to articles of association, but to the bye-laws of the insurance company, but the Court of Appeal treated the bye-laws as comparable to articles of association, the question being whether the alteration of the bye-laws was effective as against policy-holders who were entitled under their policies to have the whole of the profits distributed. The proposed alteration provided for the carrying of a percentage of the profits to a reserve fund. The Court of Appeal held that the company ought to continue to distribute the entire profits, and Cozens-Hardy, L.J., after referring to the fact that the rights of a shareholder are by statute made liable to be altered by a special resolution of the company, said this: "But the case of a contract between an outsider and the company is entirely different, and even a shareholder must be regarded as an outsider in so far as he contracts with the company otherwise than in respect of his shares. It would be dangerous to hold that in a contract of loan or a contract of service or a contract of insurance validly entered into by a company there is any greater power of variation of the rights and liabilities of the parties than would exist if, instead of the company, the contracting party had been an individual. A company cannot, by altering its articles, justify a breach of contract."

The recent case of *Southern Foundries, Ltd. v. Shirlaw*, 56 T.L.R. 637, which I discussed last week, affords another example of the principle that a company is not excused for breach of contract simply because the breach results from an alteration of the articles. There, it may be remembered, a managing director was, by his service contract, appointed for a period of ten years on terms which, having regard to the articles of the company, exempted him from liability to be removed from his office of director during that period. Subsequently the articles were altered, and the new articles contained a power to remove any director from office. This power was acted upon, and the managing director, having been removed from his office of director, necessarily ceased to be managing director; and it was held that the company was liable in damages for breach of the contract to employ the managing director for the fixed term. The alteration of articles was not of itself a breach of contract, and the power conferred by the new article to remove a director was validly created; but to act on that power involved an infringement of the managing director's rights under his service agreement, for which the company was liable in damages.

Lord Porter stated the general principle thus: "(1) A company cannot be precluded from altering its articles, thereby giving itself power to act on the provisions of the altered articles—but so to act may, nevertheless, be a breach of contract if it is contrary to a stipulation in a contract validly made before the alteration. (2) Nor can an injunction be granted to prevent the adoption of the new articles. In

that sense they are binding on all and sundry, but for the company to act on them will none the less render it liable in damages if such action is contrary to the previous engagements of the company."

It will be observed that Lord Porter expressed the view that an injunction cannot be granted to prevent the adoption of new articles. This cannot, I think, be regarded as more than an *obiter dictum*, as there was no question of granting such an injunction, but it is a *dictum* all the more valuable because the existing authorities are in conflict on the point. In *Punt v. Symons & Co., Ltd.* [1903] 2 Ch. 506, the company had entered into an express agreement not to alter the clauses in its articles of association relating to the appointment of a governing director, but an injunction to restrain the holding of a meeting for the purpose of altering those clauses was refused, and Byrne, J., expressed the view that the agreement could not operate to prevent the articles being altered under the provisions of what is now s. 10 of the 1929 Act; at the same time he recognised that the alteration might result in a breach of contract for which the remedy lay in damages. On the other hand, in *British Murac Syndicate, Ltd. v. Alperston Rubber Co., Ltd.* [1915] 2 Ch. 186, where the company had expressly agreed that the plaintiff should have the right to nominate two directors, and the articles so provided, Sargant, J., granted an injunction to restrain the company from altering the relevant articles. The correctness of this decision has been questioned—see, for example, "Buckley on the Companies Acts," 11th ed., p. 19, "Palmer's Company Precedents," 14th ed., vol. I, p. 589—and we now have the added weight of Lord Porter's opinion on the point; and the balance of authority would seem to be in favour of the view that a company cannot effectually preclude itself from exercising its statutory power to alter its articles, though, as we have seen, it cannot by altering its articles justify the breach of a contract.

A Conveyancer's Diary.

"NOT TO PERMIT OR SUFFER."

I do not propose to discuss the point upon which *Lewis & Co. v. Bell Property Trust, Ltd.* [1940] Ch. 345, was decided, as that has already been done by my colleague in the "Landlord and Tenant Notebook." But a subsidiary point of some general interest was hinted at in the concluding paragraph of the judgment of the learned judge, regarding the somewhat difficult covenant that the covenantor will not "permit or suffer" something to be done on the land.

If I covenant that I will not keep a tobacconist's shop on my land, that covenant will bind myself only. By a reference to executors, administrators and assigns the burden can be imposed on those claiming under me by descent or purchase, but will not bind me or my estate after I have parted with the land. These considerations would apply equally to freehold and leasehold covenants. In particular a covenant by a lessee not to do something could not be enforced against him after he had sub-let, as the act complained of would not be his act. This difficulty is got round by making the lessee covenant not to do the thing and not to *permit or suffer* it to be done.

"Suffer" seems to be a wider word than "permit." The distinction is a narrow one, and Atkin, L.J., refused to recognise it at all in a case where both words appeared together as a single phrase: *Berton v. Alliance Economic Investment Co.* [1922] 1 K.B. 742, 759, 761. But if the words appear separately in different parts of the covenant, or in different covenants in a series of covenants, so as to make or imply some distinction between them, effect will be given to the distinction (*Barton v. Reed* [1932] 1 Ch. 362, 375).

In that case it was stated that "suffer" must "cover allowing something to be done which the covenantor has the complete power to prevent" (*per* Luxmoore, J., at p. 375). The definition of the narrower word "permit" was stated more fully by Atkin, L.J., in *Berton v. Alliance Economic Investment Co.*, *supra*, at p. 761: "'permit' means one of two things, either to give leave for the act, which without that leave could not be legally done, or to abstain from taking reasonable steps to prevent the act when it is within a man's power to prevent it."

In the first branch of this statement, it is laid down that the covenant is broken by something which is actively done. Such action may vary in degree from a mere consent to an active participation. Thus, where the covenant is not to permit or suffer the demised premises to be used for the purpose of a tobacconist's business, the mildest case is that where the sub-lessee who is already in possession asks the lessee whether he may use them for that purpose, and the lessee says "Yes, so far as I am concerned." The strongest case is that where the lessee takes some part in the prohibited

business, as in *Atkin v. Ross* [1923] 1 Ch. 522. The intermediate case would be that where the lessee expressly sub-demises for the purpose of such a business, but does no more. Such a case arose in *Teape v. Douse* (1905), 92 L.T. 319, and in *Ives v. Brown* [1919] 2 Ch. 314, a case much better known as an authority upon the devolution of the right to enforce covenants than upon this point.

So much for action, which I am inclined to think is the true scope of the word "permit." Atkin, L.J.'s definition includes also abstention from preventing something which the covenantor could legally permit, which he indicated probably would include abstention to take legal action to prevent it. "Suffer" seems to me primarily to refer to such abstention.

Thus, if the lessee is under an obligation not to permit or suffer the premises to be used for the purpose of a tobacconist's business, and duly takes a covenant from his sub-lessee not to use them for such purpose, and then fails to sue upon the latter covenant when he could successfully do so, he would be liable to the head-lessor for "suffering" the premises to be so used. Such a case arose in *Barton v. Reed*, *supra*. The case which is suggested in *Lewis v. Bell* [1940] Ch. 345, is somewhat similar, but really falls within the class where the permission is more active.

There, Bell demised certain premises to Lewis, who covenanted not to use them for any purpose other than that of the business of tobacconists. The lessor on his part covenanted not to allow his adjacent property to be used during the term for the "business of the sale of tobacco, cigars and cigarettes." Shortly afterwards the lessor let part of his adjacent premises to the "A.B.C.," a firm of tea-shop proprietors, who covenanted not to use the premises demised to them except as a restaurant or tea-shop. The lessor, in fact, had demised the second set of premises for the purpose of a restaurant or tea-shop and could not possibly have succeeded in an action to restrain the A.B.C. from doing any of the things properly incident to carrying on a restaurant or tea-shop. The A.B.C. did, in fact, sell cigarettes, as almost every tea-shop does. The action was brought by the first lessees, the tobacconists, against their landlord claiming an injunction to restrain the defendants from permitting the A.B.C. to use their premises for the sale of cigarettes. In fact, the action failed because it was held that though the A.B.C. sold cigarettes, they were not doing that which the covenant prohibited, namely, carrying on the *business* of the sale of tobacco, cigars and cigarettes. This decision is one with which it would be difficult to quarrel. But the point of present interest is this. Suppose that it had been held that the carrying on of a tea-shop involved, by the almost invariable practice of selling cigarettes at such places, the carrying on also of the *business* of dealing in tobacco, etc., how would the lessors have stood? They would have demised the premises for a purpose which must have involved user for a business which they had covenanted not to permit or suffer. But, once they had demised to the A.B.C. it would have been impossible for them to restrain the A.B.C. from selling cigarettes, for such sales are, by hypothesis, a necessary incident of the tea-shop business for which the premises were demised. Simonds, J., did not, of course, have to decide this point, but said: "I mostly throw out this suggestion. No case has been cited to me which, in my view, involves the proposition that a person who has entered into such a covenant as this and then demised the premises for a purpose which he knows or ought to know would involve the prohibited user, is entitled to rely on that fact and say: 'I am not liable. I have not permitted this, because I have put it out of my own power to prevent the user for the purpose of which I have demised the premises.'" This suggestion is surely right. Such a lessor is in the position similar to that referred to above as participation in the breach. It is not participation, as the covenantor does not continue to do anything active. But the second sub-lessee is doing something which the lessor is bound, as against the first sub-lessee, to prevent. The lessor can no longer prevent it, because he has created a situation in which, as against the second lessee, he is bound to allow it. By tying his own hands, he has as clearly permitted the second sub-lessee to do the thing in question as if he had been asked expressly for leave and had given it.

Landlord and Tenant Notebook.

COVENANT TO REPAIR OLD BUILDING.

A NEW illustration of the nature and scope of a covenant to repair when the subject-matter is an old building has been afforded by the decision in *Pembrey v. Lamin* (1940), 2 All E.R. 434 (C.A.). The defendant in that case, a vintner, took the ground floor and basement of a house in Marylebone on a sixteen-year lease, the first year's rent being reduced in view of her liability for internal repairs, while the plaintiff

her landlord, covenanted to keep the external walls in good and tenable repair. The plaintiff was admittedly aware of the tenant's intentions to use the ground floor as a wine bar and the basement as a cocktail bar. Such user, however, turned out to be impracticable owing to the percolation of rainwater, and when the defendant consulted a surveyor she found that, the house being about one hundred years old, there were no modern devices for avoiding damp and that it would cost about £200 to waterproof the walls. When sued for rent, she counter-claimed for breach of covenant accordingly, and the county court judge held the plaintiff to be liable.

But in the Court of Appeal it was held that the learned judge had misdirected himself on a number of points, first and foremost on the question of the nature of the plaintiff's obligation. The principle to be applied was stated in *Lister v. Lane and Nesham* [1893] 2 Q.B. 212 (C.A.), and re-stated in *Lurcott v. Wakely and Wheeler* [1911] 1 K.B. 905 (C.A.). The former is indeed a leading authority on the question of liability in the case of old buildings. The premises concerned had been built over one hundred years before the demise. Their foundation was a timber platform resting on muddy or boggy soil beside the Thames. The lease, for seven years, contained a full repairing covenant by the tenants. By the end of the term one wall had developed a substantial bulge and floors were five inches out of level. Nothing short of rebuilding could save the place. In his judgment, Lord Esher, M.R., said: "... if a tenant takes a house which is of such a kind that by its own inherent nature it will in course of time fall into a particular condition, the effects of that result are not within the tenant's covenant to repair. However large the words of the covenant may be, a covenant to repair a house is not a covenant to give a different thing from that which the tenant took ... The result of the nature and condition of the house itself, the result of time upon that state of things, is not a breach of the covenant to repair." In *Lurcott v. Wakely and Wheeler*, tenants were sued at the end of their lease for the cost of taking down and rebuilding the wall of an old house, the cause of action being breach of a covenant to repair. It was held that, while the older authority decided that a duty to repair a house did not imply a duty to rebuild it—to give back a totally different structure—that had no bearing on a case in which replacement of parts was what was called for, however costly that replacement might be.

Applying these decisions to the facts of *Pembrey v. Lamdin*, the Court of Appeal held that the mistake made in the court below was to treat the covenant to keep in good and tenable repair as if it had been a covenant to keep the premises dry. While it was true that the walls were somewhat out of repair as unwaterproofed walls and some pointing was necessary, there was no evidence that this would effectively reduce the dampness.

The new case is useful as an illustration of the true distinction between *Lister v. Lane and Nesham* and *Lurcott v. Wakely and Wheeler*. A casual perusal of the former might have led one to suppose that the covenantee might be excused if the subject-matter was so old that large scale operations were necessary. The latter showed that neither age nor expense were in themselves relevant. Comparing it in turn with the recent case, the distinction is as follows: the wall in *Lurcott v. Wakely and Wheeler* was an old wall worn out by age—but all the covenantor expected was that it should be repaired as an old wall of the same kind. The walls in *Pembrey v. Lamdin* were old walls—but they never had been waterproof, damp-courses not having been invented when they were erected, and the covenantee was therefore not entitled to the operations she demanded.

A comment which suggests itself is this: the two older authorities not only establish that "repair" means "renew in the same kind," but also limit the meaning of that word to the replacement of decayed matter. Buckley, L.J., in his judgment in *Lurcott v. Wakely and Wheeler*, was very insistent on this "repair always involves renewal; renewal of a part; of a subordinate part." "Repair is restoration by renewal or replacement of subsidiary parts of a whole." For the purposes of dealing with the facts of that case this was indeed sufficient. But when, in *Bishop v. Consolidated London Properties, Ltd.* (1933), 102 L.J.K.B. 257, a tenant covenantee sued for damages resulting from the blocking of a gutter pipe by the body of a dead pigeon, du Parc, J., approached the question of the scope of a repairing covenant from a different angle, and decided that the landlords had failed to keep the pipe in repair. The learned judge considered that "repair" meant "to make fit again to perform its function; to put in order." Still more recently, in *Greg v. Planque* [1936] 1 K.B. 669 (C.A.), when landlords were entitled to enter the demised premises for the purpose of executing repairs to their own, "making good all damage

thereby occasioned," the Court of Appeal agreed with the same learned judge in considering that the cleaning of a flue was the execution of a repair. "It may properly be said that an apparatus is repaired when an obstruction which is a defect in its proper working is taken out, even though in any particular case renewal does not prove to be necessary," said Slesser, L.J. Neither of these cases was cited in *Pembrey v. Lamdin*. I do not suggest that they would have made any difference; *Bishop v. Consolidated London Properties, Ltd.*, is perhaps the nearer of the two, and the defendant might have argued in support of her counter-claim that the walls were not in order and were not fit to perform their function as known to the plaintiff. But I think that the effective answer would have been that, allowing for the extended connotation of the term "repair," what was laid down in the two older authorities still held good; that du Parc, J.'s definition included the word "again"; that a covenantee was not obliged to do anything which would render the premises more fit to perform their function than they ever had been if this meant replacing matter or apparatus by matter or apparatus of a different character. Still, I should have liked a ruling on the point.

Our County Court Letter.

VESTED INTEREST UNDER WILL.

In a recent case at Bromyard County Court (*In re Mason, deceased*) the trustee of the will applied for directions as to the distribution of a legacy of £300. The will was dated the 28th April, 1914, and the £300 was thereby bequeathed upon trust to pay the income to the testator's son, Arthur Thomas Mason, for life, and after his decease to divide the capital among his children "as and when they attain the age of twenty-one years." The tenant for life, Arthur Thomas Mason, died on the 19th July, 1939, having had four children. Three were still living, but the fourth was reported missing in 1917, while on active service. The direction of the court was therefore asked as to whether the £300 was divisible into thirds or fourths, i.e., whether the administratrix of the deceased son was entitled to a share, in view of the fact that he was under twenty-one when reported missing. His Honour Judge Roope Reeve, K.C., observed that this question was whether the gift under the will conferred upon each child of the tenant for life a vested interest at birth, or whether the interest taken by the child was contingent upon his or her attaining the age of twenty-one years. On the true construction of the will the fund was divisible into fourths. The missing man therefore took a vested interest in the trust legacy given to the testator's son for life, and after his death for the benefit of his children. The costs of all parties, as between solicitor and client, were ordered to be paid out of the legacy on Scale C.

DISSOLUTION OF PARTNERSHIP.

In a recent case at Halesworth County Court (*In re Revell*) an application was made for the winding up of a partnership between two brothers who had been in business as bricklayers. The applicant's case was that the partnership was entered into orally in November, 1932, the profits and losses to be shared equally. The firm's business continued until the 31st March, 1938, and the assets were realised shortly afterwards, but the respondent had retained the proceeds and had neglected or refused to supply accounts, or to hand over the applicant's share. The claim therefore was for (1) accounts and inquiries, (2) a receiver and manager. At the first hearing the case had been referred to the registrar for inquiry, and a receiver was appointed. The report of the registrar was that there had been three sittings, attended by the applicant and his solicitor, and by the respondent's solicitor. Accounts were taken as from the 8th April, 1938, and the balance for distribution (subject to any order for costs of the proceedings) was £427 19s. 9d. The capital repayable was £100 to the applicant and £209 16s. 1d. to the respondent. After repayment of capital and costs the balance was divisible equally, and the sum of £427 19s. 9d. was payable as to £159 1s. 10d. to the applicant and £268 17s. 11d. to the respondent. The latter was also entitled to £35 14s. 11d. for debts, and the total due to him was thus £304 12s. 10d. As the respondent had retained £218 17s. 11d., the balance due to him was £85 14s. 11d. On consideration of the report, it was pointed out for the respondent that he had paid £120 for wages in 1937, but this had not been dealt with in the accounts. His Honour Judge Hildesley, K.C., observed that the respondent had had the opportunity to raise this point before the registrar. In the absence of a strong reason the accounts could not be re-opened. Judgment was given in accordance with the registrar's report, each party to pay his own costs.

To-day and Yesterday.

LEGAL CALENDAR.

20 May.—On the 20th May, 1699, a particularly fierce Act of Parliament came into force. It made the offence of privately stealing in any shop, warehouse or stable goods of the value of five shillings or more punishable by death without "benefit of clergy." Those who in the case of other offences remained entitled to that loophole were likewise given a knock, for it was enacted that instead of being burnt in the hand as theretofore on conviction they should be burnt "in the most visible part of the left cheek nearest the nose, which punishment shall be inflicted in open Court in the presence of the Judge."

21 May.—On the 21st May, 1798, Arthur O'Connor, the Irish rebel, stood in the dock at Maidstone charged with high treason. The excitement was intense, and when the jury acquitted him everyone thought he would be discharged. Instead it was announced that there was another warrant against him. Then confusion broke out. O'Connor leapt on to the bar and leaning on the shoulder of the Earl of Thanet, who with Fox, Sheridan and other notable Whigs had gone there to support him, made for the door through the crowd. Some of the candles lighting the court were thrown down and general confusion prevailed, but in the end the Bow Street officers stopped him.

22 May.—On the 22nd May, 1779, six Westminster School boys were tried at Hicks's Hall for an assault on a man in Dean's Yard. He had somehow offended them and after beating and hurting him severely they had forced him to kneel down and ask their pardon under threat of ripping him up with a knife. The four principal offenders were sentenced to a month's imprisonment and a collective fine of £100. Though they rejected an offer of the remission of the imprisonment if they would kneel down and ask the prosecutor's pardon, the Bench eventually relented on that point by a majority of nine to seven on condition that £50 and costs were paid to the injured man.

23 May.—On the 23rd May, 1838, George Gregory, the coachman of a gentleman living at Clapham, was charged at Bow Street with causing an obstruction among the carriages proceeding to St. James's Palace on the occasion of Her Majesty's birthday. When three police constables had tried to turn his horses towards an opening leading to Regent Street which they had made in the traffic, he had got very excited and had lashed out at them with his whip. He was ordered to pay 50s. or be imprisoned for a month.

24 May.—On the 24th May, 1724, the great Jonathan Wild, detective, thief-taker, receiver of stolen goods and supposed original of Peachum in "The Beggar's Opera," was hanged at Tyburn. About two o'clock that morning he had tried to poison himself with laudanum but without success, for two fellow-prisoners walked him up and down till he revived, broke into a profuse sweat and vomited. On the way to the gallows he was severely treated by a mob said to have amounted to more than 200,000. In the cart he was still almost insensible from the effects of the poison, but he revived sufficiently at Tyburn to pick the Ordinary's pocket of his corkscrew and was turned off with it still in his hand.

25 May.—On the 25th May, 1725, Lord Midleton resigned the office of Lord Chancellor of Ireland. His abilities as an equity judge ranked very high, and he displayed sterling honesty, bold independence and sincere patriotism. He was Chancellor for over ten years. It was written of him that "his Court was an enlightened school, in which a mild and benevolent magistrate, by practice and example, animated the Bar to legal skill."

26 May.—William Bovill, second son of Dr. Benjamin Bovill, of Wimbledon, was born on the 26th May, 1814. He became Chief Justice of the Common Pleas.

THE WEEK'S PERSONALITY.

William Bovill never seems to have had any doubt about his choice of a career. He did not take a degree, but went straight to a firm of solicitors in the City of London as an articled clerk. "At an early age," says a fellow-pupil, "he was remarkable for the zeal with which he pursued his legal studies." Later he practised as a special pleader for a short time and in his twenty-fifth year he was called to the Bar at the Middle Temple, joining the Home Circuit. His early connection with the other branch of the profession helped him in getting work and in fourteen years he was a "silk" with a busy commercial practice. In 1866 he succeeded Sir William Erle as Chief Justice of the Common Pleas. He was not a great judge, but his training at the Bar, where he had been noted for the scrupulous care with which he attended to his briefs, had given him a fine practical mastery of commercial

law. His vigorous mind and quick apprehension made him at first inclined to jump to conclusions without hearing the evidence out, but in time he rid himself of this tendency. He filled his office for seven years until his death in 1873. He was remembered as one of the best type of non-university judge. Though others were more eloquent, few were more learned than he.

KEEPING IT SHORT.

During a case before Mr. Justice Crossman a well-known "silk" recently observed that "the shorter a document is the harder it is to get it accurate, and that's the only real excuse why Chancery lawyers are so long-winded." Three hundred years ago the idea had already got about that this verbosity might be limited, and in "The Practice Unfolded," a book dealing with the art of the Chancery lawyer in the seventeenth century, it was said: "No counsellour ought to put his hand to any bill, answer, or other pleading, unless it be drawn, or at least perused by himself in the paper draught, before it be ingrossed, and they are to take care that the same be not stuffed with repetition of deeds, writings or records in *haec verba*; but the effect and substance of so much of them only as is pertinent and material to be set down, and that in brief terms without long and needless traverses of points not traversable, tautologies, multiplications of words or other impertinencies, occasioning needless prolixity, and that the ancient brevity, succinctness in bills and other pleadings may be restored and observed."

THE CHANCERY WAY.

The late Sir Arthur Underhill gave an amusing account of the "Bill in Chancery" which in his early days began every Chancery suit. It was "an enormous screed running into many thousands of words and setting out in great detail the story of the suitor's wrongs and the enormity of the acts or defaults of the defendants." Every document relevant to the claim had to be set out and printed in full and all sorts of fictitious allegations made. The next step (called "scraping the defendant's conscience") was to turn every statement into a searching question to be answered by him on oath in the utmost detail. This was often delegated by equity draftsmen to their clerks. Once, it is said, Edward Karslake's clerk prepared an astonishing interrogatory in a case in which a trustee was being sued by a married woman at whose solicitation he had allowed trust money, which she was restrained from anticipating, to be advanced to her husband, ostensibly to save him from bankruptcy. The interrogatories emerging from the "cross-bill" filed on behalf of the trustee ran: "Did not the defendant fall down on her knees or on one and which of them and implore the plaintiff with tears in her eyes or in one and which of them to advance the said sum to her husband to save him from bankruptcy and their children from ruin or how otherwise?"

Reviews.

The Law Relating to Building and Engineering Contracts. By W. T. CRESWELL, K.C., assisted by NORMAN P. GREIG, B.A., of the Inner Temple, Barrister-at-Law. With a Foreword by the late ALEXANDER MACMORRAN, M.A., K.C. 1940. Demy 8vo. pp. xxiii and (with Index) 418. London: Sir Isaac Pitman & Sons, Ltd. Price 16s. net.

The secret of this book's success is that it weaves into a satisfactory and full account of the many cases on the subject much shrewd and practical advice to architects, builders and surveyors, for whose use it is mainly intended. The lawyer with a difficult building contract to draw or consider will find special value in the lucid explanation of such technical mysteries as lump sum contracts, entire contracts, interim certificates, quasi-arbitrator, retention moneys, etc., which tend to make the subject pre-eminently one for the specialist. The word "post" at pp. 170 and 171 after the *Neale v. Richardson* reference (1938), 54 T.L.R. 539, should read "ante," as the case is fully explained at pp. 164 and 165. It is perhaps superfluous to deal with the facts of a case like *Gale v. New* (1938), 54 T.L.R. 213, in detail at two separate places (pp. 60 and 219). It is also respectfully submitted that the usefulness of the book might be enhanced, particularly for students for the examinations of the Institute of Builders, if it contained a brief résumé of the law of arbitrations. The index requires attention; for example, under "Tort—liability for" the only reference is to five lines at p. 326 on the liability of the architect or engineer, and it completely ignores the excellent chapter on Liability for Damage to Persons and Property. The book, however, is remarkable for what it contains rather than for what it omits, and reference must finally be made to the full appendixes of forms, including those of the 1939 R.I.B.A. Contract.

Notes of Cases.

HIGH COURT—KING'S BENCH DIVISION.

Rappaport v. London Plywood and Timber Company, Ltd.

Atkinson, J. 8th February, 1940.

Contract—Sale of timber—Government restrictions—Limited to owner—Control of Timber (No. 1) Order, 1939 (No. 1031), para. 1—Control of Timber (No. 5) Order, 1939 (No. 1329), para. 1 (1).

Action on a contract for the sale of timber.

The plaintiff was a manufacturer of bedroom furniture, and the defendants were timber merchants. The action arose out of two contracts made respectively in October and November, 1938, under which timber was sold by the defendants to the plaintiff. At the beginning of September, 1939, owing to the disturbance of business caused by the outbreak of war, the plaintiff asked the defendants to hold over a bill for £50 for a short time; the defendants agreed to do so on the plaintiff's paying £12 down; subsequently the balance of £38 was duly paid. The defendants then refused to deliver any more of the timber unless the plaintiff paid cash for it. The present action was accordingly brought for a declaration that the defendants were bound to deliver timber which they had sold to the plaintiff when certain bills of exchange were paid; delivery of the quantity which should have been delivered at the date of the issue of the writ; and damages.

ATKINSON, J., having held on the facts that the property in the timber in question had passed to the plaintiff, and disposed of two other defences, said that the third defence was that the plaintiff could not recover because of the Timber Control Regulations, 1939. The Control of Timber (No. 1) Order, of the 1st September, 1939, provided: "1. No person shall dispose of . . . any quantity of timber situate in the United Kingdom to any other person or invite an offer to acquire any quantity of any such timber, if that quantity . . . exceeds 10 per cent. of the aggregate quantity of all such timber . . . owned by that person since the coming into force of this Order." That Order, read as a whole, clearly only affected owners. As the property in the timber in question had passed to the plaintiff, there could be no disposing of it by its owners to him, so that the Order did not apply here. By para. 1 (1) of the Control of Timber (No. 5) Order, 1939, which came into force on the 4th October, 1939, "No person shall acquire . . . for consumption any timber . . . except under . . . a licence granted by the Minister of Supply . . ." That provision, again, could not apply to the present case, because an owner could not "acquire" his own goods. In his (lordship's) opinion, reading the various Orders together, they were intended to prevent an owner from passing the property in timber to another person, and did not affect an owner who was merely seeking to take possession of his own goods. There was no reason, from the point of view of public interest, why he should be prevented from doing that. The plaintiff must therefore have a declaration that the timber was his, and it must be delivered up to him without his producing a licence. The plaintiff contended further that, if he had received the timber at the right time, he could have used it in his business, but that there was now a restriction on use which would prevent him from making his ordinary profit. The plaintiff was entitled on that score to damages for wrongful detention, the amount of which must be determined by a referee.

COUNSEL: *Hallis: Roskill.*

SOLICITORS: *Alec Woolf & Turk; Rundle & Hobrow.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL.

R. v. Surgenor.

Charles, Humphreys and Wrottesley, JJ. 19th February, 1940.

Criminal law—Evidence—Child of tender years—Whether to be sworn—Decision of committing justices not to swear—Recorder's duty to make independent investigation.

Appeal from conviction.

Property, including foreign copper coins and a handkerchief, was stolen from a restaurant at Tonbridge. Bloodstains were observed on the steps of the restaurant, and the appellant, Surgenor, was the next day discovered to have received injuries. Some of the copper coins were subsequently found at his lodgings, and the handkerchief in his possession. One of the witnesses for the prosecution was a child aged nine years. The Recorder was told that the committing justices had refused to allow the child to be sworn, and he thereupon decided, without making an independent investigation into the question, that she should give evidence without being sworn. She gave evidence of having at the material time seen the appellant insert a foreign coin into a gas meter. The appellant gave evidence denying that he had ever knowingly been in possession of any foreign coins. Having been convicted before the Recorder at Tenterden Quarter Sessions of larceny and shopbreaking, and sentenced to fifteen months' imprisonment, he now appealed.

HUMPHREYS, J., delivering the judgment of the court, said that the case against the appellant was clearly substantial. The prosecution called the little girl in order to strengthen their case with regard to the foreign coins. The child was evidently very intelligent, and her evidence,

when tested in cross-examination, appeared to be clearly right. On more than one occasion the Court of Criminal Appeal had intimated that it was the presiding judge's duty to satisfy himself whether a child of tender years was capable of being sworn. Here the Recorder had elected to abide by the justices' view. That was wrong, and must not occur again. Those who presided over criminal trials must remember that it was the presiding judge's duty to make the investigation himself. Clearly no harm had been done to the appellant by the irregularity which had taken place. The child appeared to the Recorder to be thoroughly intelligent, and she might and ought to have been sworn. The jury evidently accepted her evidence, and if they accepted it when she was unsworn it was not likely that they would have rejected it had she been sworn. Further, perhaps because the child's evidence was only a makeweight to prove something which the police and her mother had already proved, the jury were not reminded of the statutory provision with regard to the corroboration of the evidence of children of tender years. There had therefore been in that respect also an irregularity of the kind referred to by anticipation in *R. v. Southern* (1930), 22 Cr. App. R. 6, at p. 11. The court agreed with and followed that statement of the law. There might be cases where the court would quash the conviction in such circumstances. The present was not such a case. There had been no miscarriage of justice, and nothing more than an irregularity. The appeal must be dismissed.

COUNSEL: *D. Knight Dix; J. Thompson.*

SOLICITORS: *The Registrar of the Court of Criminal Appeal; The Director of Public Prosecutions.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

War Legislation.

(Supplementary List, in alphabetical order, to those published week by week in THE SOLICITORS' JOURNAL, from the 16th September, 1939, to the 18th May, 1940.)

ROYAL ASSENT.

The following Bills received the Royal Assent on the 22nd and 23rd May:—

Emergency Powers (Defence).
National Service (Armed Forces).
Treachery.

PROGRESS OF BILLS.

HOUSE OF LORDS.

Agricultural Wages Regulation (Scotland) Bill [H.C.]	
Read Second Time.	[21st May.
Courts (Emergency Powers) Amendment Bill [H.L.]	
Read First Time.	[8th May.
Evidence and Powers of Attorney Bill [H.L.]	
Read Third Time.	[21st May.
Marriage (Scotland) Emergency Provisions Bill [H.L.]	
Read Second Time.	[21st May.
Middlesex Deeds Bill [H.L.]	
Read First Time.	[8th May.
Solicitors Bill [H.L.]	
Read First Time.	[30th April.
War Charities Bill [H.L.]	
Passed through Committee.	[21st May.

HOUSE OF COMMONS.

Colonial Development and Welfare Bill [H.C.]	
Read Second Time.	[21st May.
Finance Bill [H.C.]	
Read First Time.	[1st May.
Limitation of Dividends Bill [H.C.]	
Read Second Time.	[23rd May.
Purchase Tax Bill [H.C.]	
Read First Time.	[1st May.
War Risks Insurance Bill [H.C.]	
Read Second Time.	[23rd May.
Workmen's Compensation (Supplementary Allowances) Bill [H.C.]	
Read Second Time.	[30th April.

STATUTORY RULES AND ORDERS.

No. 683. **Alien.** Registration Form for Use in Hotels, etc. Direction dated May 6, under Article 7 of the Aliens Order, 1920, as subsequently amended.

No. 720. **Alien.** Restriction Order, dated May 11, made under Article 11 of the Aliens Order, 1920, as subsequently amended.

No. 726. **Aliens (Protected Areas)** (No. 2) Order, dated May 14.

No. 725. **Customs.** The Export of Goods (Control) (No. 13) Order, dated May 15.

No. 738. **Customs.** The Export of Goods (Control) (No. 12) Order, dated May 17.

Nos. 696 and 697. **Emergency Powers (Defence).** Orders in Council, dated May 9, adding Regulations 4A and 54A to the Defence (General) Regulations, 1939.

- Nos. 708 and 709. Emergency Powers (Defence). Orders in Council, dated May 12, amending the Defence (Finance) Regulations, 1939, also (Isle of Man).
- No. 721. Emergency Powers (Defence). The Control of Communications Order (No. 2), dated May 10.
- No. 718. Emergency Powers (Defence). The Small Craft (Information) Order, dated May 10.
- No. 710. Emergency Powers (Defence). The Currency and Securities Restriction Exemptions (No. 1) Order, dated May 12.
- No. 712. Emergency Powers (Defence). The Home Produced Eggs (Maximum Prices) Order, dated May 10.
- No. 706. Emergency Powers (Defence). The Farina (Control and Provisional Prices) Order, dated May 10.
- No. 727. Emergency Powers (Defence). Order, dated May 15, amending the Feeding Stuffs (Maximum Prices) Order, 1940.
- No. 717. Emergency Powers (Defence). Order, dated May 11, amending the Food Control Committees (England and Wales and Northern Ireland) Enforcement Order, 1939.
- No. 707. Emergency Powers (Defence). General Licence, dated May 10, under the Dried Fruits (Maximum Prices) Order, 1940.
- No. 719. Emergency Powers (Defence). The Oranges (Maximum Prices) Order, dated May 13.
- No. 704. Emergency Powers (Defence). The Lard (Maximum Prices) Order, dated May 9.
- No. 701. Emergency Powers (Defence). Order, dated May 9, amending the Canned Salmon (Provisional Maximum Prices) Order, 1939.
- No. 737. Emergency Powers (Defence). The Control of Timber (No. 12) Order, dated May 17.
- No. 729. **Factories.** The Bottling of Beer, Wines and Spirits (Overtime) Regulations, dated May 10.
- No. 635. **Industrial and Provident Society** (Amendment of Fees) Regulation, dated May 1.
- No. 703. **National Service (Armed Forces).** Proclamation, dated May 9, directing that certain British subjects shall become liable under the National Service (Armed Forces) Act, 1939, to be called up for service in the Armed Forces of the Crown.
- No. 693. **Patents, Designs, Copyright and Trade Marks** (Emergency) (Amendment) Rules, dated May 7.
- No. 713. **Prices of Goods** (Permitted Prices) (No. 1) Order, dated May 10.
- No. 685. **Prices of Goods** (Price Regulated Goods) Order, dated May 10.
- No. 734. **Trading with the Enemy** (Custodian) Amendment (No. 2) Order, dated May 16.
- No. 724. **War Risks (Commodity Insurance)** (No. 4) Order, dated May 14.
- No. 728. **War Risks Insurance.** Government Tonnage Replacement Scheme. The Valuation Tribunal Rules, dated May 14.
- No. 660. **Wheat Commission** (Approval of Byelaws) No. 20 Order, dated May 4.

PROVISIONAL RULES AND ORDERS.

Pension. The Assistance Board (Superannuation) Rules, dated May 8.

NON-PARLIAMENTARY PUBLICATIONS.

STATIONERY OFFICE.

List of Emergency Acts and Statutory Rules and Orders. Supplement 19, May 15.

Copies of the above Acts, Bills, S.R. & O's, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

Legal Notes and News.

Honours and Appointments.

The London Gazette announces that the King has conferred the dignity of a Viscountcy of the United Kingdom on Sir John Simon, the new Lord Chancellor, "by the name, style and title of VISCOUNT SIMON, of Stackpole Elidor in the County of Pembroke."

LORD CALDECOTE, Secretary for the Dominions, is to be Leader of the House of Lords.

The London Passenger Transport Board announce the following changes in organisation, consequent upon the retirement of Mr. Frank Pick, the Chief Executive Officer: Mr. CECIL GRANTHAM PAGE will be head of the Department of the Secretary and Chief Legal Adviser. The duties allocated to the department comprise the secretarial, legal and parliamentary work, rating, and also the administration and management of the Board's estates and surplus properties. Mr. Page was called to the Bar by the Inner Temple in 1910. Mr. RONALD BRUCE McDONALD, formerly Chief Solicitor, will be head of the Department of the Chief Commercial Manager. The duties of this department

will include the purchase and control of all stores and supplies, the public relations and publicity work, commercial advertising, the fixing of fares and charges, the settlement of all claims and certain legal work of the Board. Mr. McDonald was admitted a solicitor in 1908.

Professional Announcements.

(2s. per line.)

Godden, Holme & Ward, solicitors, 34, Old Jewry, London, E.C.2, announce that Mr. D. G. N. Lloyd-Lowles is serving with H.M. Forces and has retired from the firm as from the 1st May, 1940.

Notes.

Viscount Simon, the new Lord Chancellor, took the oaths of office and allegiance before the Lord Chief Justice at the Law Courts on Tuesday. There were also present on the Bench Sir Boyd Merriman (President of the Probate, Divorce and Admiralty Division), the Lords Justices of Appeal, and all the other judges at present in London.

Court Papers.

SUPREME COURT OF JUDICATURE.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. I.	MR. JUSTICE FARWELL.
	Mr.	Mr.	Mr.
May 27	More	Reader	Ritchie
" 28	Reader	Andrews	Blaker
" 29	Andrews	Jones	More
" 30	Jones	Ritchie	Reader
" 31	Ritchie	Blaker	Andrews
June 1	Blaker	More	Jones

GROUP A.		GROUP B.	
MR. JUSTICE BENNETT.	MR. JUSTICE SIMONDS.	MR. JUSTICE CROSSMAN.	MR. JUSTICE MORTON.
Non-Witness.	Witness.	Non-Witness.	Witness.
Mr.	Mr.	Mr.	Mr.
May 27	Andrews	More	Blaker
" 28	Jones	Reader	More
" 29	Ritchie	Andrews	Reader
" 30	Blaker	Jones	Andrews
" 31	More	Ritchie	Jones
June 1	Reader	Blaker	Ritchie

TRINITY SITTINGS, 1940.

COURT OF APPEAL.

One Division of the Court will hear Interlocutory and Final Appeals from the Chancery Division, Bankruptcy Appeals and Palatine Appeals, to be followed by Appeals from the Probate and Divorce Division. Later in the Sittings, Interlocutory and Final Appeals from the King's Bench Division will be heard.

A Second Division of the Court will hear Interlocutory and Final Appeals from the King's Bench Division, to be followed later in the Sittings by County Court Appeals and Appeals re The Workmen's Compensation Acts.

HIGH COURT OF JUSTICE.

CHANCERY DIVISION.

Before Mr. Justice FARWELL.

At the beginning of the Sittings Mr. Justice FARWELL will sit for the disposal of the List of Witness Actions.

GROUP A.

Before Mr. Justice BENNETT.

Non-Witness List.

Mondays ... Chamber Summons.
Tuesdays ... Motions, Short Causes, Petitions, Procedure Summons, Further Considerations and Ad-journed Summons.
Wednesdays Ad-journed Summons.
Thursdays ... Ad-journed Summons.
Lancashire Business will be taken on Thursdays, 6th and 20th June, 4th and 18th July.
Fridays ... Motions and Ad-journed Summons.

THE COURT OF APPEAL.

A List of Appeals for hearing, entered up to Friday, 10th May, 1940.

FROM THE CHANCERY DIVISION.

(Final List.)

For Judgment.

Re Luck Settlement Trusts
Walker v Luck

For Hearing.

Scott v Frank F Scott (London)
Ltd.
Same v Same
Hodge v Griffiths
Re Lumley-Halland Smithers v Collier

Dvorkovitz dec Dvorkovitz v Morgan
King Features Syndicate Incorp v O & M Kleeman Ltd
Abington Borough Council v James

(In Bankruptcy.)

Re a Debtor (No. 562 of 1939)
Exparte the Debtor v The Petitioning Creditors and the Official Receiver
Re the Debtors (No. 115 of 1940)
Exparte the Debtors v The Petitioning Creditor and the Official Receiver

FROM THE PROBATE AND DIVORCE DIVISION.

(Final List.)

Varenne v Varenne
Falconer, dec Sheldon v Falconer
Farrow v Farrow

FROM THE KING'S BENCH DIVISION.

(Final and New Trial List.)

Gorman v Barnard
Barclays Bank Ltd v Cuthbert
Barker v Owen
Goodwin v Holmes
Holden v Thomas Bentock & Co
Reid v B Sunley & Co Ltd
William Cowlin & Sons Ltd v Drummond
Lipman v Webb
General Accident Fire & Life Assurance Corp Ltd v Midland Bank Ltd
Wilkins v Bedfordshire County Council
Porter v Porter
Re the Arbitration Acts, 1889-1934 Digby v General Accident, Fire & Life Assurance Corp Ltd
Pollock v Charles Burt Ltd
Chatfield v Gasse
McLaren v P C S Limited
Hogarth v Pharmaceutical Products Ltd
Pearce v Dell
The Wimborne & Cranborne Rural District Council v The East Dorset Assessment Committee
Draper v Draper
Lobban v Lond
Hibbett v Leicester City Corporation
Palmer v E G Sumner Ltd
Casey v Game
Orbach v The North Western Printing & Publishing Co Ltd
Rosner v Bird
Graumann v Treitel
Mackay v Cullen
Tams v Winning
Reed v Croft
Fraser v Knight
Spowage v Flynn
Prideaux v Thoday
Same v Same
Batra v Mirror Steam Laundry Co Ltd
Bolger v Crossley
Ginsberg v Canadian Pacific Steamships Ltd
Grant v Coles
Gilbert v Kursaal (Southend-on-Sea) Estates Ltd
Re Arbitration Acts, 1889-1934 Imperial Smelting Corporation Ltd v Joseph Constantine Steamship Line Ltd
Northern Fruit Brokers Ltd v Aberdeen and Commonwealth Line Ltd

Whybrow v London Passenger Transport Board
Belton Estates Ltd v Fouracre
Smethurst v Beaumonts (Manchester) Ltd
Kerry v Keighley Electrical Engineering Co Ltd
Halsey v Priestman
Osborne-Peacock Co Ltd v Laver
Day v Coupe Company and Motor Cab Co of G B Ltd
Lomas v Manchester City Council
Jones v Powell Duffryn Associated Collieries Ltd
Yelland v Same
Same v Same
Connaught Estates Ltd v Moss
Hills v Co-operative Wholesale Society Ltd
O'Neill v Scott
Weddall v Weddall
Barking Rating Authority v Central Electricity Board
Griffiths v Cory Brothers & Co Ltd
Cambridge v Weddall
Re Arbitration Acts, 1889-1934 Forrow v H C Waller & Son (a firm)
Brake v Lyons
Altaras v Manchester Haulage Ltd
Whitehurst v Berry Hill Collieries Ltd

(Interlocutory List.)

Gonzalez v Machado
(Revenue Paper—Final List.)
Stemco Ltd v Hyett (H.M. Inspector of Taxes)
Same v The Commissioners of Inland Revenue
Boarland (H.M. Inspector of Taxes) v Pirie Appleton & Co Ltd
D'Ambrumenil v Commissioners of Inland Revenue
de Walden v Beck (H.M. Inspector of Taxes)
Beck (H.M. Inspector of Taxes) v de Walden
H.M. Attorney-General (on behalf of His Majesty) v Oldham
Harling (H.M. Inspector of Taxes) v Celynen Collieries Workmens Institute
Southern (H.M. Inspector of Taxes) v Watson

FROM COUNTY COURTS.

Bowmaker Ltd v Maguire
Camden Nominees Ltd v Turner
Same v Same
Clements v Ledger
Dawson v McDonnell
Williams v Mercer
W E Wright (Eltham) Ltd v Haywood
Pegg v Gallia Ltd
Smart Brothers Ltd v Pratt
Seymour v Law
Greenwood v Central Service Co Ltd
Same v Same
Hertman Pianos Ltd v Kent
Lambeth v Constable & Hart Ltd
Plumstead v Stockton
Lathwell v Ansell Estates Ltd
The Meta Phronts Co Ltd v H Rainsbury & Co

RE THE WORKMEN'S COMPENSATION ACTS.

Cowell v Taylor Walker & Co Ltd
Ward v Mayer & Sherratt
Whitfield v Minshall Bros (a firm)
Lissenden v C A V Bosch Ltd
Standing in the "Abated" List.

Standing in the "ABATED" List.

RE THE WORKMEN'S COMPENSATION ACTS.

Cain v Shell Mex & B P Ltd (s.o. generally July 6, 1939)

FROM COUNTY COURTS.

Thistle v Normans (Approval Stores) Ltd (s.o. generally, l.r. Oct. 26, 1939)
O'Grady v M Saper Ltd (s.o. generally April 5, 1940)

FROM THE COUNTY PALATINE COURT OF LANCASTER.

Re Rice, dec Rice v Rice (s.o. generally April 11, 1940)

HIGH COURT OF JUSTICE—CHANCERY DIVISION.

There are Two Lists of Chancery Causes and matters for hearing in Court. (I) Adjoined Summonses and Non-Witness Actions; and (II) Witness Actions, every proceeding being entered in these Lists without distinction as to the Judge to whom the proceeding is assigned. During the Sittings, warning will be given of proceedings next to be heard before each of the five Judges. Applications in regard to a "warned" matter should be made to the Judge before whom it is "warned."

Applications in regard to a proceeding which has not been "warned," should usually be made to the senior of the two Judges taking the list in which the proceeding stands.

Motions, Short Causes, Petitions and Further Considerations will be taken by the Judge taking the Non-Witness List who belongs to the group to which the proceeding is assigned.

GROUP A.—Mr. Justice BENNETT and Mr. Justice SIMONDS.

GROUP B.—Mr. Justice CROSSMAN and Mr. Justice MORTON.

Mr. Justice FARWELL will deal with the work in either Group as the state of the business requires.

The Adjoined Summons and Non-Witness List will be taken by Mr. Justice BENNETT and Mr. Justice CROSSMAN.

The Witness List will be taken by Mr. Justice SIMONDS and Mr. Justice MORTON.

Motions, Short Causes, Petitions and Further Considerations in matters assigned to Judges in Group A will be heard by Mr. Justice BENNETT.

Motions, Short Causes, Petitions and Further Considerations in matters assigned to Judges in Group B will be heard by Mr. Justice CROSSMAN.

Companies (Winding up) Liverpool and Manchester District Registries and Bankruptcy business will be taken as announced in the Trinity Sittings Paper.

Set down to 10th May, 1940.

Mr. Justice FARWELL.

Retained Matters.

Non-Witness List.

Re Richardson, dec Jackson v Holmes (s.o. generally—liberty to restore)

Witness List.

Wright v Stevens (s.o. generally—l.a.r.)

Hayes v Hirst (s.o. generally)

Trustee of Winston (a bankrupt) v Ashworth (restored)

Assigned Matter.

Re Henderson's Conveyance

Re Law of Property Act, 1925

Re Same

Re Same

At the beginning of Next Sittings the following will be heard:—

Witness List.

Foster v Foster

Roche v Shepherd

Weeks v The National Amalgamated Stevedores and Dockers Union

Goldsmid-Montefiore v Cavendish Land Co Ltd

Silver v Noel

Western v Brown

Brookes v Denson

FROM THE KING'S BENCH DIVISION.

(Final and New Trial List.)

Hogan v The Pacific Steam Navigation Co (s.o. for P.P. Appln June 30, 1939)
MacMichael v The Commissioner of Police for the Metropolis (s.o. June, 1939)
Hughes and Falconer (a firm) v Newton (s.o. generally, l.a.r.)
Eastwood v Pearlberg (s.o. generally April 9, 1940)
(Interlocutory List.)
Mitchell v M G Farm Ltd (s.o. generally Jan. 31, 1940)
(Revenue Paper—Final List.)
Batty (H.M. Inspector of Taxes) v Schroder s.o. generally, l.a.r., Oct. 31, 1939)

Mr. Justice BENNETT and

Mr. Justice CROSSMAN.

Non-Witness List.

Before Mr. Justice BENNETT.

For Judgment.

Retained Matter.

Witness List.

Re Aircraft Industries Corporation Ltd

Re Companies Act, 1929 (Application of Fabbria Automobili

Isotta Fraschini S.A.) (restored)

Same (Application of Major Henry

Musker and ors)

For Hearing.

Retained Matters.

Non-Witness List.

Re White, dec Clare v Parker

(s.o. generally)

Witness List.

Bradford Third Equitable Benefit

Building Society v Marriott

Re Cleadon Trust Ltd Remove

Liquidator (Application of

Robert Creighton) pt hd adjd

summs

Petitions.

Re Grassi, dec Stubbsfield v

Grassi

Re Coleman's Contracts

Re The Conveyancing Acts, 1881-

1911

Procedure Summonses.

Mansell-Pleydell v Walter Hill & Co Ltd (s.o. to come on with Trial)

Same v Same (s.o. to come on with Trial)

Re Courts (Emergency Powers) Act, 1939

Re Bieber (Bieber) (s.o. to be heard with action)

Re Courts (Emergency Powers) Act, 1939

Re Trower pt. hd.

Industrial & Commercial Co. Vladimir Alexeev v Beyfus

Further Considerations.

Re Kerr, dec Ford v Moorhouse fur. con.

Truscott v Green fur. con.

Before Mr. Justice CROSSMAN.

Retained Matters.

Non-Witness List.

Re Hoffnung-Goldsmid Will Trusts Sneath v Goldsmid (s.o. June 6)

Witness List.

John Carle Ltd v Hill (fixed June 19)

Assigned Matter.

Re Guardianship of Infants Act, 1925

Re Hubbard, an Infant (fixed May 29)

Short Causes.

Epsom & Ewell Borough Council v First Class Shop Developments Ltd (May 28)

Charles Crofton & Co (Engineers) Ltd v Hugh Wood & Co Ltd (May 28)

Petition.

Bulpitt v Bulpitt (May 28)

Procedure Summonses

Leicester Permanent Building Society v Erwood (May 28)

Sivyer v Aimes (May 28)

Re Courts (Emergency Powers) Act 1939

Re Halifax Building Society (Gibson) (May 28)

Mr. Justice BENNETT and

Mr. Justice CROSSMAN.

Non-Witness List.

Re T N Ward's Settlement Ward v Ward

Re Lewis' Trusts Re Lewis' Settlement Lewis v Skeffington

Re Owers, dec The Public Trustee v Death

Re Ingarfield's Articles of Partnership Ingarfield v Ingarfield

Re Beasley, dec National Provincial Bank Ltd v Blankley

Re Gordon, dec Watts v The Rationalist Press Association Ltd Attorney-General v Warwick Corporation

Re Bilantz, dec Bilantz v Bilantz

The Temperance Permanent Building Society v Robertson

The Melford Company Ltd v The Coal Commission

Re Brangwin, dec The Royal Exchange Assurance v Russell

Re Milward, dec Re Midland Railway (Additional Powers) Act, 1872 Re Land Clauses

Consolidation Act, 1845

Re Stevens, dec Stevens v Barfield

Hinckley & South Leicestershire Permanent Benefit Building Society v Freeman

Re Harvey, dec Blyth v Blyth

Re Blaythwaite, dec Blaythwaite v Blaythwaite

Re McCarthy's Will Trusts Fowler v McCarthy

Re Radcliffe, dec Radcliffe v Radcliffe

Re Murchison's Will Trusts Murchison v Hugonin

Re Smallwood, dec Smallwood v Smallwood

Re Tunks, dec The Public Trustee v Lewis

Re Manson's Will Trusts Lichfield Diocesan Trust v The Bishop of Stafford (restored)

Re Davenport, dec Youden v Davenport (restored)

Re Marcus Will Trusts de Pass v Benjamin

Re Hartley, dec Andrew v Fox

Re Bowman's Will Trusts Bowman v Bowman

Re Waldron, dec Re Waldron's Settlement Waldron v Errington Wales

Re Waldron's Settlement Trusts Waldron v Errington Wales

Re Henderson, dec Re Trustee Act, 1925

Lee v Lee (restored) (to be heard with witness actions Nos. 42 and 43)

Re Furtado's Marriage Settlement Sherry v Birkett

Re Browne, dec Falconer v Browne

Re Waghorn, dec Rolfe v Mateer (restored)

Re Coates, dec Goodall v Lightfoot

Re Bemister's Will Trusts Dowden v Bemister

Re Jones, dec Jones v Jones

Re Oakley's Will Trusts Oakley v Oakley

Re Greenfield, dec Greenfield v Greenfield

Re Wheaton, dec Pearse v Doyle

Re Kerr, dec Ford v Moorhouse (to be heard with fur. con. on May 21)

Re Fisher, dec Midland Bank Executor & Trustee Co Ltd v Fisher (restored)

Re Gordon, dec Lloyds Bank Ltd v Lloyd

Re Sandys, dec Kirton v Sandys

Re Robinson's Settlement Robinson v Robinson

Re Tatham, dec National Bank Ltd v Scheinder

Mr. Justice SIMONDS and

Mr. Justice MORTON.

Witness List.

Before Mr. Justice SIMONDS.

Assigned Matters.

Re Patents & Designs Acts, 1907-1938 Re Grove's Letters Patent No. 454088

Re Patents & Designs Acts, 1907-1938 Re Zeiss Ikon Aktiengesellschaft Letters Patent No. 419915

Re Patents & Designs Acts, 1907-1932 Re Iversen's Letters Patent

Re Patents & Designs Acts, 1907-1939 Re Kaufman's Letters Patent No. 396346

Retained Matters.

Non-Witness List.

Re Courts (Emergency Powers) Act, 1939 Re Williams Application (Atkins Electrical Appliances Ltd) (fixed May 29)

Witness List.

Re Amalgamated Stone & Lime Co Ltd Re The Companies Act, 1929 (s.o. generally, l.a.r.) (pt hd)

At the beginning of Next Sittings the following will be heard:—

Assigned Matters.

Re Patents & Designs Acts, 1907-1939 Re Airspeed Ltd and A H Tiltman's Letters Patent No. 397964

Re Same Re Same (fixed May 21)

Witness List.

Roby v Benzol & By-Products Ltd (fixed May 22)

Maclean v Cooper

The Sturtevant Engineering Co Ltd v Beck & Pollitzer (a firm)

Collier v Fish

Surrey County Council v Williams

Green v Vyner

COMPANIES COURT.

Petitions.

Arthur W North & Co Ltd (to wind up—ordered on May 10, 1937 to s.o. generally)

A W Wood & Co Ltd (same—ordered on July 17, 1939, to s.o. generally)

Curtis Cream Ices Ltd (same—ordered on April 29, 1940, to s.o. until first Court day for Companies in Michaelmas Term)

Claude Rye Ltd (same—ordered on April 8, 1940, to s.o. until May 27, 1940)

S Brown & Son (General Ware-housemen) Ltd (same—ordered on May 6, 1940, to s.o. until June 3, 1940)

Macleod & Zinovieff Ltd (same—ordered on April 8, 1940, to s.o. until May 27, 1940)

Jetglaze Ltd (same—ordered on April 29, 1940, to s.o. until May 27, 1940)

Newbery Publications Ltd (same—ordered on May 6, 1940, to s.o. until June 3, 1940)

Cameron & Pooley Ltd (same—ordered on May 7, 1940, to s.o. until June 3, 1940)

Jefton Entertainments Ltd (same—ordered on May 6, 1940, to s.o. until May 27, 1940)

Metropolitan Real Estates Society Ltd (same—ordered on May 6, 1940, to s.o. until May 27, 1940)

Empire Trading Stamp Co (Sheffield) Ltd (same—ordered on May 6, 1940, to s.o. until May 27, 1940)

John Shaw (Rayners Lane) Ltd (same—ordered on May 6, 1940, to s.o. until May 27, 1940)

John A R McDonald & Co Ltd (same)

Wembley Aluminium Ltd (same)

Rodd Engineering Co Ltd (same)

Balon's Hotels (Bournemouth) Ltd (same)

Leightons (Contractors) Ltd (same)

Destone Fabrics Ltd (same)

Celtis Ltd (same)

S Davis & Co Ltd (same)

Tudor John Ltd (same)

Swinger and Bowley Ltd (same)

Thornton Butterworth Ltd (same)

Sports Journals Ltd (same)

Imperishable Paint & Varnish Co Ltd (same)

Norris & Partners Ltd (same)

Punderson Confectionery Co Ltd (same)

Brand Hose Texts Ltd (same)

Far Eastern Insurance Co Ltd (payment out of Statutory deposit)

E-H Fuel Injection Ltd (to confirm reduction of capital—ordered on May 6 to s.o. generally)

S Markheim Ltd (to confirm reduction of capital)

Anglo-Rhodesian and General Investment Co Ltd (same)

Chancery Securities Ltd (same)

Robert Donkin Ltd (same)

Jerome Ltd (same)

Freedlands Ltd (same)

Leach's Ltd (same)

Wilson & Herdan Ltd (same)

J K Gulland Ltd (same)

Joint Inventors Trust Ltd (same)

English and Continental Casing Co Ltd (same)

Ashford School for Girls (Kent) Ltd (to confirm alteration of objects)

Adjourned Summonses.

Marina Theatre Ltd Application of F H Cooper—ordered on May 10, 1933, to s.o. generally—liberty to apply to restore)

Pictos Ltd (Application of Liquidators—ordered on March 29, 1935, to s.o. generally—liberty to apply to restore)

Bottlers and General Engineers Ltd (Application of Harold Cecil Gains—ordered on June 17, 1937, to s.o. generally—liberty to apply to restore)

Cleaton Trust Ltd (Application of Robert Creighton—ordered on April 12, 1938, to s.o. generally)

Electric Truck and Battery Co Ltd (Application of Hubert John Edward Lawrence—ordered on April 9, 1940, to s.o. generally—liberty to apply to restore—to be retained by Mr. Justice Crossman)

Same (Application of Ernest John Rose—ordered on April 9, 1940, to s.o. generally—liberty to apply to restore—to be retained by Mr. Justice Crossman)

Before Mr. Justice MORTON.

For Judgment.

Moscrop v London Passenger Transport Board

For Hearing.

Retained Matters.

Re Harding's Vesting Deed Prideaux - Brune v Prideaux - Brune

Re Sophia Ward, dec Nickinson v Ward

Re Lamerton, dec Lamerton v Roberts (restored)

Re Buchan, dec Buchan v Lund (restored)

Re Fletcher, dec Fletcher v Fletcher

Re Bishop, dec Bond v Bishop (restored)

Mr. Justice SIMONDS and

Mr. Justice MORTON.

Witness List.

The State of Spain v The Chancery Lane Safe Deposit & Offices Co Ltd (fixed June 3)

Nettlehip v Cooper (not before Michaelmas)

Natural Chemicals Ltd v Amblins (Chemists) Ltd

Newman v Wright (fixed June 11)

Birchenough v The Derbyshire County Council (not before May 28)

Davies v Robins (not before May 23)

Re United Publicity Services Ltd
Re The Companies Act, 1929
(Application of Liquidator)
Wright v Faulkner's (Hodder
Bridge) Hotel Ltd
Re Unity Permanent Money
Society Re Companies Act,
1929
Re Bogg, dec Dickinson v Bogg
Harrison v Harrison (not before
Michaelmas)
Jensen v Foussett
Hickey v Blakiston
French v French
The Yorkshire Electric Power
Company v The Borough of
Rotherham
Re White, dec White v Swan
(fixed June 12)
Bowditch v Goodall
Mannifield v Titus Ward & Co Ltd
Brecknell Willis & Co Ltd v
Hockey
Barclays Bank Ltd v Holt
(restored)
Wernawe Investments Ltd v
Insurance Contracts Co Ltd
Re Williams, dec Spencer v
Williams (restored)

Bolton v Grant
Peyton v Peyton
Jones v Jones
Re Mansell Pleydell Settlement
Stanton v Pleydell
Re Paton's Declaration of Trust
Gates v Lockwood
Lancaster v Lancaster
Lee v Lee (restored)
Same v Same (restored)
Bent v Jaques
Re Scully, dec Scully v Mack
Re Harris, dec Teff v Harris
Weir v Law
Dawlish Land Co Ltd v Lancaster
Hall v Hall
Re Niers Letters Patent Re
Patents & Designs Acts, 1907/32
(restored)
Re Same
Leighton v Northumberland Hotel
(Palm Bay) Ltd
Smith v Kirkpatrick
International De Lavaud Manu-
facturing Corporation Ltd v
The Clay Cross Co Ltd
Manasse v Botzaris

A E Mallandain Investments Limited (in liquidation) and A J Shadbolt (H M
Inspector of Taxes)
Mrs E M Sothorn-Smith and J M Clancy (H M Inspector of Taxes)
S Southern (H M Inspector of Taxes) and Aldwych Property Trust Ltd
James Gillyatt McMillan and W H Guest (H M Inspector of Taxes)
W E Sharpless and Rees (H M Inspector of Taxes)
Lindsay Millais Jopling and Commissioners of Inland Revenue
F J Cattermole (H M Inspector of Taxes) and Corporation of Reigate
Brigadier General Howard Clifton Brown, M P and The Commissioners of Inland
Revenue
Woking Electric Supply Company Ltd and W H Kneen (H M Inspector of Taxes)
W H Kneen (H M Inspector of Taxes) and Woking Electric Supply Company Ltd
W H Kneen (H M Inspector of Taxes) and Woking Electric Supply Company Ltd
The Old Silkstone Collieries Ltd and Marsh (H M Inspector of Taxes)
The Morning Post Ltd and Horace Coe George (H M Inspector of Taxes)
E J Castiglione and A R Wadman (H M Inspector of Taxes)
The Commissioners of Inland Revenue and Ernest Robert Gunner
The Commissioners of Inland Revenue and Walter Payne
Morris Securities Limited and Commissioners of Inland Revenue
The Commissioners of Inland Revenue and E L Payton
Commissioners of Inland Revenue and Robert Wilson Black
Commissioners of Inland Revenue and Cyril Wilson Black
A G Kneeshaw (H M Inspector of Taxes) and B Albertoli
Leonard W Forsyth and W P. Thompson (H M Inspector of Taxes)
Commissioners of Inland Revenue and The Imperial Tobacco Company (of Great
Britain & Ireland) Limited

PETITION.

In the matter of the Fines Act, 1833 and in the matter of a Petition by the Corpora-
tion of the City of London

DEMURRER.

H M Attorney-General and Henry Stannett

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October, 1939) 2%. Next London Stock Exchange Settlement,
Thursday, 6th June, 1940.

	Div. Months.	Middle Price 22 May 1940.	Flat Interest Yield.	† Approx- imate Yield with redemption.
ENGLISH GOVERNMENT SECURITIES.				
Consols 4% 1957 or after	FA	106½	£ s. d.	£ s. d.
Consols 2½%	JAJO	72	3 14 11	3 9 5
War Loan 3% 1955-59	AO	98½	3 9 5	—
War Loan 3½% 1952 or after	JD	97	3 0 11	3 2 2
Funding 4% Loan 1960-90	MN	109	3 12 2	—
Funding 3% Loan 1959-69	AO	96	3 13 5	3 7 6
Funding 2½% Loan 1952-57	JD	95	3 2 6	3 4 4
Funding 2½% Loan 1956-61	AO	89	2 17 11	3 2 8
Victory 4½% Loan Average life 21 years	MS	108½	2 16 2	3 4 7
Conversion 3% Loan 1944-64	MN	107½	3 13 9	3 8 10
Conversion 3½% Loan 1961 or after	AO	97½	4 12 9	2 12 1
Conversion 3% Loan 1948-53	MS	100	3 12 0	—
Conversion 2½% Loan 1944-49	AO	97	3 0 0	3 0 0
National Defence Loan 3% 1954-58	JJ	98½	2 11 7	2 17 9
Local Loans 3% Stock 1912 or after	JAJO	84½	3 0 11	3 2 1
Local Stock	AO	32½	3 11 2	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	83½	3 13 10	—
India 4½% 1950-55	MN	108	3 11 0	—
India 3½% 1931 or after	JAJO	92½	4 3 4	3 10 9
India 3% 1948 or after	JAJO	80	3 15 8	—
Sudan 4½% 1939-73 Average life 27 years	FA	107	3 15 0	—
Sudan 4% 1974 Red. in part after 1950	MN	105	4 4 1	4 1 3
Tanganyika 4% Guaranteed 1951-71	FA	106	3 16 2	3 8 1
Lon. Elec. T. F. Corp'n. 2½% 1950-55	FA	91	3 15 6	3 6 9
COLONIAL SECURITIES.				
*Australia (Commonwealth) 4% 1955-70	JJ	101½	2 14 11	3 4 7
Australia (Commonwealth) 3½% 1964-74	JJ	89½	—	—
Australia (Commonwealth) 3% 1955-58	AO	87½	3 17 3	3 17 3
*Canada 4% 1953-58	MS	108½	3 12 7	3 16 1
New South Wales 3½% 1930-50	JJ	96	3 8 7	3 19 9
New Zealand 3% 1945	AO	95½	3 13 9	3 10 0
Nigeria 4% 1963	AO	105	3 12 11	4 0 5
Queensland 3½% 1950-70	JJ	94½	3 2 10	4 0 2
*South Africa 3½% 1953-73	JD	99	3 16 2	3 13 5
Victoria 3½% 1929-49	AO	96	3 14 1	3 16 1
CORPORATION STOCKS.				
Birmingham 3% 1947 or after	JJ	79½	3 10 8	3 11 1
Croydon 3% 1940-60	AO	91½	3 12 11	4 0 5
Leeds 3½% 1958-62	JJ	94½	3 15 6	3 17 3
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	95½	3 12 11	4 0 5
London County 3% Consolidated Stock after 1920 at option of Corporation	MJSD	80	3 13 4	—
*London County 3½% 1954-59	FA	100	3 15 0	—
Manchester 3% 1941 or after	FA	80	3 15 6	3 10 0
Manchester 3% 1958-63	AO	91½	3 10 0	3 10 0
Metropolitan Consolidated 2½% 1920-49	MJSD	96	3 5 7	3 10 10
Met. Water Board 3% "A" 1963-2003	AO	83	2 12 1	2 19 10
Do. do. 3% "B" 1934-2003	MS	85½	3 12 3	3 13 11
Do. do. 3% "E" 1953-73	JJ	91	3 10 2	3 11 7
Middlesex County Council 3% 1961-66	MS	92	3 5 11	3 9 2
*Middlesex County Council 4½% 1950-70	MN	105½	3 5 3	3 9 4
Nottingham 3% Irredeemable	MN	80	4 5 4	3 15 11
Sheffield Corporation 3½% 1968	JJ	99½	3 15 0	—
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS.				
Great Western Rly. 4% Debenture	JJ	97	3 10 4	3 10 7
Great Western Rly. 4½% Debenture	JJ	104½	4 2 6	—
Great Western Rly. 5% Debenture	JJ	118½	4 6 1	—
Great Western Rly. 5% Rent Charge	FA	111	4 4 5	—
Great Western Rly. 5% Cons. Guaranteed	MA	107	4 10 1	—
Great Western Rly. 5% Preference	MA	92½	4 13 5	—

* Not available to Trustees over par.

† In the case of Stocks at a premium, the yield with redemption has been calculated
at the earliest date; in the case of other Stocks, as at the latest date.

HIGH COURT OF JUSTICE—KING'S BENCH DIVISION.
DIVISIONAL COURT LIST.

NOTICE.

The Solicitors for each party are requested to inform the Chief Clerk of the Crown
Office, in writing, as soon as possible, as to the probable length of each case and
the names of Counsel engaged therein.

For Argument.

Tyaa v Doncaster Amalgamated Collieries Ltd
England v Kerry
Shard Bridge Co and anr v Jones
The King v Electricity Commissioners (expte Chester Corp)
The King v Electricity Commissioners (expte Chester Corp)
Rowe v Clatworthy
Roditi Trading Co Ltd v The Port of London Authority and ors
The King v Assessment Committee of the City of Westminster (expte Trustees of
Junior Carlton Club)
The Bell Property Trust Ltd v The Assessment Committee for the Borough of
Hampstead
The Bell Property Trust Ltd v The Assessment Committee for the Borough of
Wandsworth
The Bell Property Trust Ltd v The Assessment Committee for the Borough of
Wandsworth
James v Rogers
Hulme v The Bucklow Area Assessment Committee and anr
The King v Assessment Committee for the City of Westminster (expte Grosvenor
House (Park Lane) Ltd)
The King v Assessment Committee for the City of Westminster (expte Grosvenor
House (Park Lane) Ltd)
James v Darney
Cooper v Maw
In re a Solicitor
Gould v Field
Bullimore v Rawlins
Maguire v Crouch
Bourne v Joseph Brennan & Co Ltd and anr
Fulham Borough Council v A B Hemmings Ltd
Murphy v Hillier
The King v Assessment Committee for the City of Westminster (expte St. James'
Court Estate Ltd)
Chandler v Emerton and ors

SPECIAL PAPER.

Wirral U D C v County Borough Council of Wallasey and ors
Mayor & C of Birkenhead v Same and others
Drummond v Haner

APPEALS UNDER THE PUBLIC WORKS FACILITIES ACT, 1930.

London Rd., Newcastle-under-Lyme Compulsory Purchase Order, 1939 (Appeal
of Fredk H Burgess Ltd and the Trustees of F H Burgess, dec)
County Council of Middlesex Great Chertsey Road (Compulsory Purchase) Order,
1937 (Appeal of W W Harris)

APPEALS UNDER THE HOUSING ACTS, 1925-1936.

Bethnal Green (Vyner Street, No 6) Confirmation Order, 1937 (Appeal of Trustees
of Mrs. Bates Trust for the Moravians)
Same (Vyner Street, No 7) Same
L C C (Oxley Street, Bermondsey) Order, 1938 (Appeal of Dockhead Engineering Co)
County of London (Bethnal Green, No 1) Re-Development Plan (Appeal of Trustees
of the Mrs. Elizabeth Bates Trust for the Moravians)
Shrewsbury (Golden Ball Farm etc) Confirmation Order, 1939 (Appeal of Mrs. Annie
Williams)
Bright Street and Weedon Street Confirmation Order, 1938 (Appeal of Benjamin
Blaskey)
Birmingham (Bordesley Park Road) Confirmation Order, 1938 (Appeal of Small
Estates Ltd)
L C C (Riley Street, Chelsea, No 1) Confirmation Order, 1938 (Appeal of John
Sainsbury Gilbert)

APPEALS UNDER THE UNEMPLOYMENT INSURANCE ACTS, 1935-1938.

Appeal against the decision of the Minister of Labour as to the Employment of
Alexander Hogan
Appeal against the decision of the Minister of Labour as to the Employment of
Gladys Lilian Porteous

REVENUE PAPER—Cases Stated.

William Cooper Hobbs and H G L Hussey (H M Inspector of Taxes)
Hamstead Colliery (1930) Limited and R J McLaughlin (H M Inspector of Taxes)
The Corporation of Reigate and F J Cattermole (H M Inspector of Taxes)

